

## REMARKS

Claims 2-14 are pending in the subject application.

### Objection to Specification

In the Office Action, the Examiner's Action objected to the disclosure because the information under the heading "Related Applications" needed to be updated and on page 7, line 5, the angle symbol was missing. Applicants have amended the specification to correct the noted errors.

### Claim Rejection Under 35 U.S.C. § 112

The Examiner's Action rejected Claims 2-9 and 11-14 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicants regard as their invention. The Examiner's Action notes that in Claims 2 and 11, the recitation of a "fully outward position" and "a fully inward position" of the secondary arms is vague and indefinite because the specification does not disclose the meaning of such language. Since Claims 3-9 and 12-14 depend from Claims 2 or 11, they are likewise indefinite.

Applicants have amended Claims 2 and 11 to remove the language "a fully outward position" and "a fully inward position." Applicants request, therefore, the withdrawal of the rejection under 35 U.S.C. § 112.

### Claim Rejections Under the Judicially Created Doctrine of Double Patenting

The Examiner's Action rejected Claims 2-14 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-12 of U.S. Patent No. 6,080,091. The Examiner's Action notes that although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application merely remove the limitation that the secondary arms are not constrained to move

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

within the respective arcuate paths fixed relative to the main arm member. The Examiner's Action states that the invention defined in the claims of the application is an obvious variation of the invention defined in the claims of the patent.

Applicants have submitted with this response a timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(c). As stated in the terminal disclaimer, the assignee of the current application and of U.S. Patent No. 6,080,091 are both Precor Incorporated. Applicants request, therefore, the withdrawal of the rejection under the judicially created doctrine of obviousness-type double patenting.

Claim Rejections Under 35 U.S.C. § 102(b)

The Examiner's Action rejected Claims 2 and 6-14 under 35 U.S.C. § 102(b) as being anticipated by Hecox et al., U.S. Patent No. 5,456,644. The Examiner's Action notes that Hecox et al. discloses an exercise apparatus comprising a frame; a press arm pivotally coupled to the frame; a source of exercise resistance; and a means for coupling the resistance to the press arm. The Examiner's Action further notes that the press arm comprises a main member depending from a main pivot and a pair of secondary arms coupled to the main arm member at a respective secondary pivot. The Examiner's Action continues by stating each of the secondary arms pivots both inwardly and outwardly about a respective secondary pivot from an at rest position located between a fully outward position and a fully inward position with each secondary arm hanging downwardly while in the at rest position.

Applicants have amended independent Claims 2, 10, and 11 to recite the limitation wherein each of the secondary arms pivots both inwardly and outwardly from a pendulous, at rest position. This limitation is fully supported in the original application page 7, lines 4-8. Applicants submit that Hecox et al. does not teach an exercise apparatus wherein each of the secondary arms pivots both inwardly and outwardly from a pendulous, at rest position.

Conversely, Hecox et al. discloses a positioning plate 149 in a corresponding pin 249 to lock the secondary arms 143, 144 in position for certain exercises. Thus, the secondary arms in Hecox et al. are unable to move inward and outward from a pendulous, at rest position. Furthermore, Hecox teaches a secondary arm with an at rest position dictated by the limit of movement, either a pin or full extension of the torsional resistance device, and not a pendulous at rest position. Since Hecox et al. does not teach secondary arms pivoting both inwardly and outwardly from a pendulous, at rest position, Applicants submit that amended Claims 1, 10, and 11 are not anticipated by Hecox et al.

The Examiner's Action rejected Claims 2-5, 9, and 10 under 35 U.S.C. § 102(b) as being anticipated by Habing (U.S. Patent No. 5,417,633). The Examiner's Action notes that Habing discloses an exercise apparatus comprising a frame, a press arm pivotally coupled to the frame, a source of exercise resistance, and a means for coupling the resistance to the press arm. The Examiner's Action further notes that the press arm has a main arm member depending from a main pivot on the frame and a pair of secondary arms coupled to the main arm at respective secondary pivots.

Applicants submit that Habing does not teach a press arm with a main arm member and a pair of secondary arms coupled to the main arm member at respective secondary pivots, wherein each of the secondary arms pivots both inwardly and outwardly from a pendulous rest position about a respective one of the secondary pivots. Habing teaches a hand grip coupled to a main arm member wherein each of the hand grips pivot upwardly and downwardly with respect to the secondary pivot to provide an operator with a continuously variable hand grip orientation while performing a single straightforward chest press exercise. Contrary to the up/down pivoting action of the hand grips in Habing, the inward and outward pivoting action of the secondary arms of the present invention permits the secondary arms to move outward from the at rest position to

a comfortable starting position for the performance of different exercises and inward during the performance of the exercise. Applicants submit, therefore, that amended Claims 2 and 10 are not anticipated by Habing.

Since Claims 3-9 depend upon independent Claim 2, applicants submit that these claims should be allowable as well. Since Claims 12-14 depend upon independent Claim 11, applicants submit that these claims are also allowable.

CONCLUSIONS

In view of the foregoing, applicants believe that the application is now in condition for allowance. Applicants accordingly request that all of the objections and rejections be withdrawn and that the application be passed to issue. The Examiner is invited to telephone the undersigned attorney if there are any remaining issues.

Respectfully submitted,

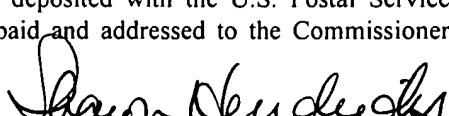
CHRISTENSEN O'CONNOR  
JOHNSON KINDNESS<sup>PLLC</sup>



Bradley T. Fox  
Registration No. 47,572  
Direct Dial No. 206.695.1770

I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to the Commissioner for Patents, Washington, D.C. 20231, on the below date.

Date: 10-9-01



BTF:TSP

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

VERSION WITH MARKINGS TO SHOW CHANGES MADE OCTOBER 9, 2001

In the Specification:

The paragraph under heading 1. Related Applications in the current application has been deleted and replaced with a new paragraph.

Please amend the paragraph beginning at line 4, page 7, to read as follows:

As shown in **Figure 1**, press arm **20** is in its rest position. The axes of secondary pivots **28** are inclined from vertical by an angle  $\alpha$ . As a result of the inclination of the secondary pivot axes, handle arms **30** will assume a lateral rest position under the influence of gravity. As shown in **Figure 2**, the natural rest position of handle arms **30** in the lateral direction is generally straight down from pivots **28**.

In the Claims:

2. (Amended) An exercise apparatus comprising a frame;

a press arm pivotally coupled to the frame, said press arm having a main arm member depending from a main pivot on the frame and a pair of secondary arms coupled to the main arm member at respective secondary pivots, wherein each of the secondary arms pivots both inwardly and outwardly from a pendulous, at rest position about a respective one of the secondary pivots [from an at rest position located between a fully outward position and a fully inward position, wherein each of the secondary arms hangs downwardly while in the at rest position];

a source of exercise resistance; and

means for coupling said source of exercise resistance to said press arm.

10. (Amended) An exercise apparatus comprising:

a frame;

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

a press arm pivotally coupled to the frame, said press arm having a main arm member depending from a main pivot on the frame and a pair of secondary arms coupled to the main arm member at respective secondary pivots, wherein each of the secondary arms pivots both inwardly and outwardly about a respective one of the secondary pivots from a [an] pendulous, at rest position located at the start position for a straightforward chest press[, wherein each of the secondary arms hangs downwardly while in the at rest position];

a source of exercise resistance; and

means for coupling said source of exercise resistance to said press arm.

11. (Amended) A press arm for an exercise machine comprising a main arm member having a main pivot and a pair of laterally spaced apart secondary pivots orthogonal with respect to the main pivot, and secondary pivots parallel to one another and inclined with respect to vertical;

a pair of secondary arms coupled to the main arm member at respective ones of the secondary pivots; and

wherein each of the secondary arms pivots both inwardly and outwardly from a pendulous, at rest position about a respective one of the secondary pivots [from an at rest position located between a fully outward position and a fully inward position, wherein each of the secondary arms hangs downwardly while in the at rest position].

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100